

Senate Engrossed

**FILED**

**KEN BENNETT  
SECRETARY OF STATE**

State of Arizona  
Senate  
Fiftieth Legislature  
First Regular Session  
2011

CHAPTER 346

# **SENATE BILL 1283**

AN ACT

AMENDING SECTION 25-411, ARIZONA REVISED STATUTES; RELATING TO CHILD CUSTODY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 25-411, Arizona Revised Statutes, is amended to  
3 read:

4 25-411. Modification of custody decree; affidavit; contents;  
5 military families

6 A. A person shall not make a motion to modify a custody decree earlier  
7 than one year after its date, unless the court permits it to be made on the  
8 basis of affidavits that there is reason to believe the child's present  
9 environment may seriously endanger the child's physical, mental, moral or  
10 emotional health. At any time after a joint custody order is entered, a  
11 parent may petition the court for modification of the order on the basis of  
12 evidence that domestic violence involving a violation of section 13-1201 or  
13 13-1204, spousal abuse or child abuse occurred since the entry of the joint  
14 custody order. Six months after a joint custody order is entered, a parent  
15 may petition the court for modification of the order based on the failure of  
16 the other parent to comply with the provisions of the order. A motion or  
17 petition to modify a custody order shall meet the requirements of this  
18 section. Except as otherwise provided in ~~subsection B~~ of this section, if a  
19 custodial parent is a member of the United States armed forces, the court  
20 shall consider the terms of that parent's military family care plan to  
21 determine what is in the child's best interest during the custodial parent's  
22 military deployment.

23 ~~B. For the purposes of a motion to modify a custody decree, the~~  
24 ~~military deployment of a custodial parent who is a member of the United~~  
25 ~~States armed forces is not a change in circumstances that materially affects~~  
26 ~~the welfare of the child if the custodial parent has filed a military family~~  
27 ~~care plan with the court at a previous custody proceeding and if the military~~  
28 ~~deployment is less than six months.~~

29 B. IF THE PARENT WITH WHOM THE PARENT'S CHILD RESIDES A MAJORITY OF  
30 THE TIME RECEIVES TEMPORARY DUTY, DEPLOYMENT, ACTIVATION OR MOBILIZATION  
31 ORDERS FROM THE UNITED STATES MILITARY THAT INVOLVE MOVING A SUBSTANTIAL  
32 DISTANCE AWAY FROM THE PARENT'S RESIDENCE A COURT SHALL NOT ENTER A FINAL  
33 ORDER MODIFYING PARENTAL RIGHTS AND RESPONSIBILITIES AND PARENT-CHILD CONTACT  
34 IN AN EXISTING ORDER UNTIL NINETY DAYS AFTER THE DEPLOYMENT ENDS, UNLESS A  
35 MODIFICATION IS AGREED TO BY THE DEPLOYING PARENT.

36 C. THE COURT SHALL NOT CONSIDER A PARENT'S ABSENCE CAUSED BY  
37 DEPLOYMENT OR MOBILIZATION OR THE POTENTIAL FOR FUTURE DEPLOYMENT OR  
38 MOBILIZATION AS THE SOLE FACTOR SUPPORTING A REAL, SUBSTANTIAL AND  
39 UNANTICIPATED CHANGE IN CIRCUMSTANCES PURSUANT TO THIS SECTION.

40 D. ON MOTION OF A DEPLOYING OR NONDEPLOYING, MOBILIZING OR ABSENT  
41 MILITARY PARENT, THE COURT, AFTER A HEARING, SHALL ENTER A TEMPORARY ORDER  
42 MODIFYING PARENTAL RIGHTS AND RESPONSIBILITIES OR PARENT-CHILD CONTACT DURING  
43 THE PERIOD OF DEPLOYMENT OR MOBILIZATION IF:

1           1. A MILITARY PARENT WHO HAS CUSTODY OR PARENTING TIME PURSUANT TO AN  
2 EXISTING COURT ORDER HAS RECEIVED NOTICE FROM MILITARY LEADERSHIP THAT THE  
3 MILITARY PARENT WILL DEPLOY OR MOBILIZE IN THE NEAR FUTURE.

4           2. THE DEPLOYMENT OR MOBILIZATION WOULD HAVE A MATERIAL EFFECT ON THE  
5 MILITARY PARENT'S ABILITY TO EXERCISE PARENTAL RIGHTS AND RESPONSIBILITIES OR  
6 PARENT-CHILD CONTACT.

7           E. ON MOTION OF A DEPLOYING PARENT, IF REASONABLE ADVANCE NOTICE IS  
8 GIVEN AND GOOD CAUSE IS SHOWN, THE COURT SHALL ALLOW THAT PARENT TO PRESENT  
9 TESTIMONY AND EVIDENCE BY ELECTRONIC MEANS WITH RESPECT TO PARENTING TIME OR  
10 PARENT-CHILD CONTACT MATTERS INSTITUTED PURSUANT TO THIS SECTION IF THE  
11 DEPLOYMENT OF THAT PARENT HAS A MATERIAL EFFECT ON THAT PARENT'S ABILITY TO  
12 APPEAR IN PERSON AT A REGULARLY SCHEDULED HEARING. FOR THE PURPOSES OF THIS  
13 SUBSECTION, "ELECTRONIC MEANS" INCLUDES COMMUNICATION BY TELEPHONE OR VIDEO  
14 TELECONFERENCE.

15           F. THE COURT SHALL HEAR MOTIONS FOR MODIFICATION BECAUSE OF DEPLOYMENT  
16 AS EXPEDITIOUSLY AS POSSIBLE.

17           G. IF A MILITARY PARENT RECEIVES MILITARY TEMPORARY DUTY, DEPLOYMENT,  
18 ACTIVATION OR MOBILIZATION ORDERS THAT INVOLVE MOVING A SUBSTANTIAL DISTANCE  
19 AWAY FROM THE MILITARY PARENT'S RESIDENCE OR THAT OTHERWISE HAVE A MATERIAL  
20 EFFECT ON THE MILITARY PARENT'S ABILITY TO EXERCISE PARENTING TIME, AT THE  
21 REQUEST OF THE MILITARY PARENT, FOR THE DURATION OF THE MILITARY PARENT'S  
22 ABSENCE THE COURT MAY DELEGATE THE MILITARY PARENT'S PARENTING TIME, OR A  
23 PORTION OF THAT TIME, TO A CHILD'S FAMILY MEMBER, INCLUDING A STEPPARENT, OR  
24 TO ANOTHER PERSON WHO IS NOT THE CHILD'S PARENT BUT WHO HAS A CLOSE AND  
25 SUBSTANTIAL RELATIONSHIP TO THE MINOR CHILD, IF THE COURT DETERMINES THAT IS  
26 IN THE CHILD'S BEST INTEREST. THE COURT SHALL NOT ALLOW THE DELEGATION OF  
27 PARENTING TIME TO A PERSON WHO WOULD BE SUBJECT TO LIMITATIONS ON PARENTING  
28 TIME. THE PARTIES SHALL ATTEMPT TO RESOLVE DISPUTES REGARDING DELEGATION OF  
29 PARENTING TIME THROUGH THE DISPUTE RESOLUTION PROCESS SPECIFIED IN THEIR  
30 PARENTING PLAN, UNLESS EXCUSED BY THE COURT FOR GOOD CAUSE SHOWN. A COURT  
31 ORDER PURSUANT TO THIS SUBSECTION DOES NOT ESTABLISH SEPARATE RIGHTS TO  
32 PARENTING TIME FOR A PERSON OTHER THAN A PARENT.

33           H. ALL TEMPORARY MODIFICATION ORDERS PURSUANT TO THIS SECTION SHALL  
34 INCLUDE A SPECIFIC TRANSITION SCHEDULE TO FACILITATE A RETURN TO THE  
35 PREDEPLOYMENT ORDER WITHIN TEN DAYS AFTER THE DEPLOYMENT ENDS, TAKING INTO  
36 CONSIDERATION THE CHILD'S BEST INTERESTS.

37           I. A custody decree or order that a court enters in contemplation  
38 of or during the military deployment of a custodial parent outside of the  
39 continental United States shall specifically reference the deployment and  
40 include provisions governing the custody of the minor child after the  
41 deployment ends. Either parent may file a petition with the court after the  
42 deployment ends to modify the decree or order, in compliance with subsection  
43 F- L of this section. The court shall hold a hearing or conference on the  
44 petition within thirty days after the petition is filed.

1       D- J. The court may modify an order granting or denying parenting  
2 time rights whenever modification would serve the best interest of the child,  
3 but the court shall not restrict a parent's parenting time rights unless it  
4 finds that the parenting time would endanger seriously the child's physical,  
5 mental, moral or emotional health.

6       E- K. If after a custody or parenting time order is in effect one of  
7 the parents is charged with a dangerous crime against children as defined in  
8 section 13-705, child molestation as defined in section 13-1410 or an act of  
9 domestic violence as prescribed in section 13-3601 in which the victim is a  
10 minor, the other parent may petition the court for an expedited hearing.  
11 Pending the expedited hearing, the court may suspend parenting time or change  
12 custody ex parte.

13       F- L. To modify any type of custody order a person shall submit an  
14 affidavit or verified petition setting forth detailed facts supporting the  
15 requested modification and shall give notice, together with a copy of the  
16 affidavit or verified petition, to other parties to the proceeding, who may  
17 file opposing affidavits. The court shall deny the motion unless it finds  
18 that adequate cause for hearing the motion is established by the pleadings,  
19 in which case it shall set a date for hearing on why the requested  
20 modification should not be granted.

21       G- M. The court shall assess attorney fees and costs against a party  
22 seeking modification if the court finds that the modification action is  
23 vexatious and constitutes harassment.

24       H- N. Subsection F- L of this section does not apply if the requested  
25 relief is for the modification or clarification of visitation and not for a  
26 change of joint custody, joint legal custody, joint physical custody or sole  
27 custody.

APPROVED BY THE GOVERNOR APRIL 29, 2011.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 29, 2011.

Passed the House April 18, 2011,

by the following vote: 58 Ayes,

0 Nays, 2 Not Voting

[Signature]  
Speaker of the House

Cheryl Laube  
Chief Clerk of the House

Passed the Senate March 1, 2011,

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

[Signature]  
President of the Senate

Chaimin Bellington  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this

19 day of April, 2011,

at 9:15 o'clock A. M.

[Signature]  
Secretary to the Governor

Approved this 29th day of

April, 2011,

at 9:04 o'clock A. M.

[Signature]  
Governor of Arizona

S.B. 1283

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 29th day of April, 2011,

at 7:30 o'clock P. M.

[Signature]  
Secretary of State